YAI YEN HON

v.

TENG AH KOK & SIM HUAT SDN. BHD. & ANOR.

FEDERAL COURT, KUALA LUMPUR
CHONG SIEW FAI CJ (SABAH & SARAWAK)
PEH SWEE CHIN FCJ
MOHAMED DZAIDDIN FCJ
[CIVIL APPEAL NO: 02-147-OF 1994]
14 DECEMBER 1996

CIVIL PROCEDURE: *Appeal - Appeal to Supreme Court - Leave to appeal - Whether necessary - Courts of Judicature Act 1964, s. 68(1)(a) - Amount or value of the subject matter of the claim - Whether Court to consider amount claimed or amount awarded by trial Court*

WORDS & PHRASES: *"Amount or value of the subject matter of the claim" - Courts of Judicature Act 1964, s. 68(1)(a) - Whether the amount or value of the subject matter of the 'appeal' or the amount or value of the subject matter of the 'civil suit'*

The appellant had claimed for general and special damages amounting to over RM4 million as a result of a collision/accident between his motorcar and a lorry belonging to the 1st respondent. The trial judge found the respondents wholly liable but only awarded the appellant damages totalling RM62,400. The appellant appealed.

At the appeal, Counsel for the respondents raised a preliminary objection - contending that the appellant must first obtain leave to appeal pursuant to s. 68(1)(a) of the Courts of Judicature Act 1964 ('the Act') as the amount awarded by the trial judge was less than RM100,000. Counsel argued that as this was an accident claim, the 'amount or value of the subject matter of the claim' had crystallised in the judgment of the trial Court and, thus, in determining whether leave was necessary, the Court vested with the jurisdiction to grant leave must consider the value of the said judgment.

Held:

Per Chong Siew Fai CJ (Sabah & Sarawak)

[1] Section 68(1)(a) of the Act, which uses the phrase "amount or value of the subject matter of the claim," must be read as a whole.

[2] The determining factor is not the amount or value of the subject matter of the appeal (the amount recovered or the amount of the award handed down by the trial Court), but the amount or value of the subject matter of the civil suit (the amount claimed).

[3] In the instant appeal, the subject matter was the road accident and the appellant's claim was for an amount far in excess of RM100,000. Thus, the amount adjudged at the trial assumed little or no significance. The appellant was entitled to appeal without leave even though the trial Court awarded him only RM62,400.

[Preliminary objection dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROSEDUR SIVIL: *Rayuan - Rayuan kepada Mahkamah Agung - Kebeneran untuk merayu - Samada diperlukan - Akta Mahkamah Kehakiman 1964 s. 68(1)(a) - Jumlah atau nilai hal-perkara tuntutan - Samada Mahkamah harus mempertimbangkan jumlah yang dituntut atau jumlah yang diawardkan oleh Mahkamah perbicaraan*

PERKATAAN DAN ISTILAH: *"Amount or value of the subject matter of the claim" - Akta Mahkamah Kehakiman 1964, s. 68(1)(a) - Samada jumlah atau nilai hal-perkara "appeal" atau jumlah atau nilai hal-perkara "civil suit"*

Perayu telah menuntut bagi mendapatkan gantirugi am dan gantirugi khas berjumlah lebih daripada RM4 juta akibat suatu pelanggaran/kemalangan antara keretanya dan sebuah lori kepunyaan responden pertama. Hakim perbicaraan mendapati responden bertanggungan sepenuhnya tetapi hanya mengawardkan perayu gantirugi yang berjumlah sebanyak RM62,400. Perayu telah merayu.

Ketika rayuan, Peguam bagi pihak responden telah membangkitkan bantahan awal - dengan menegaskan bahawa perayu sepatutny terlebih dahulu mendapatkan kebenaran untuk merayu selaras dengan s. 68(1)(a) Akta Mahkamah Kehakiman 1964 ('Akta') kerana jumlah yang diawardkan oleh Hakim perbicaraan adalah kurang daripada RM100,000. Peguam berhujah bahawa oleh kerana ini merupakan tuntutan kemalangan, "the amount or value of the subject matter of the claim" telah dibentuk dalam penghakiman Mahkamah perbicaraan dan, dengan itu, dalam menentukan samada kebenaran adalah perlu, Mahkamah yang telah diletakhak dengan bidangkuasa untuk memberikan kebenaran, mestilah mempertimbangkan nilai penghakiman tersebut.

Diputuskan:

Oleh Chong Siew Fai HB (Sabah & Sarawak)

[1] Seksyen 68(1)(a) Akta, yang menggunakan ungkapan "amount or value of the subject matter of the claim", mestilah dibaca secara keseluruhannya.

[2] Faktor penentu bukannya merupakan jumlah atau nilai halperkara rayuan tersebut (jumlah yang diperolehi atau jumlah award yang diberikan oleh Mahkamah perbicaraan), tetapi jumlah atau nilai halperkara guaman sivil tersebut (jumlah yang dituntut).

[3] Dalam rayuan semasa ini, hal-perkara adalah kemalangan jalanraya dan tuntutan perayu adalah bagi jumlah yang jauh melebihi RM100,000. Dengan itu, jumlah yang dihakimi di perbicaraan tersebut adalah dianggap terlalu sedikit atau tidak bermakna. Perayu adalah berhak kepada rayuan tanpa kebenaran walaupun Mahkamah perbicaraan telah mengawardkannya hanya sebanyak RM62,400.

[Bantahan awal ditolak.]

Cases referred to:

Yap Fook Cheong & Anor. v. Burkill (Malaya) Sdn. Bhd. & Anor. [1991] 3 CLJ 1711 ***(dist)***

Monohary Teresa & Anor. v. Tan Ah Lek [1996] 1 CLJ 149 ***(refd)***

Dreesman v. Harris [1854] 9 Exch. 485 ***(refd)***

Smith v. Gill [1896] 2QB 166 ***(cit)***

Brett v. Thrower [1945] 2 All ER 284 ***(refd)***

Chan Kee Beng v. Ramasamy Naidu [1939] MLJ Rep. 113 ***(foll)***

Studham v. Stanbridge [1895] 1 QB 870 ***(dist)***

Legislation referred to:

Courts of Judicature Act 1964, s. 68(1)(a)
Johor Courts Enactment, s. 56
County Courts Act 1934 [UK], s. 105
County Courts Act 1959 [UK], s. 108
County Courts Rules 1889 [UK], O. 50A, r. 12

Other sources referred to:

Halsbury's Laws of England, 4th Edn., Vol. 10, paras. 654, 655
Halsbury's Statutes of England, 3rd Edn., Vol. 7, p. 373

[Appeal from High Court Malaya, Johor Bahru; Suit No: 23-46- 1991]

For the appellant - Wong Kim Fatt (P.M. Mahalingam and Gilbert Chai with him); M/s. Gulam & Wong

For the respondents - Izzat Othman (Balbinder Kaur with him); M/s. Chua Brothers, Azzat & Izzat

JUDGMENT

Chong Siew Fai CJ (Sabah & Sarawak):

This appeal concerns a claim by the 1st plaintiff/appellant in the High Court in Johor Bahru for damages arising out of a collision between his car driven by his driver, the 2nd plaintiff, in which he was a passenger and a lorry belonging to the 1st defendant/respondent and driven by the 2nd defendant/respondent, the servant and/or agent of the 1st defendant. The appellant claimed for general and special damages totaling over RM4 million. After a full trial of the action, the learned trial Judge found the respondents solely liable but

awarded the appellant only RM9,200 for special damages and RM53,200 for general damages totaling RM62,400. Against the decision the appellant appeals. The judgment was handed down on 26 February 1994 and notice of appeal was filed on 19 March 1994.

At the commencement of the appeal, Counsel for the respondents raised a preliminary objection on the propriety of the appeal contending that since the amount awarded was less than RM100,000 the appellant must first obtain leave under s. 68(1)(a) of the Courts of Judicature Act 1964 ('the Act') before bringing this appeal, which the appellant did not.

Section 68(1)(a) of the Act applicable at the material time read:

> No appeal shall be brought to the Supreme Court in any of the following cases:
>
> (a) when **the amount** or **value of the subject-matter of the claim** (exclusive of interest) is less than one hundred thousand ringgit, except with the leave of the Supreme Court or a Judge of the High Court; (emphasis added).

For the respondents, learned Counsel pointed out that the judgment sum RM62,400 (excluding interest) obtained on 26 February 1994 was less than RM100,000. He argued that since it was an accident claim, the amount or value of the subject matter of the claim crystallized in the judgment and that in determining whether leave was necessary, the Court vested with the jurisdiction to grant leave must consider the value of the judgment, citing the following passage of the judgment of Hashim Yeop A. Sani CJ in *Yap Fook Cheong & Anor. v. Burkill (Malaya) Sdn. Bhd. & Anor.* [1991] 3 MLJ 160 @ 163 in support:

> The operative words in s. 68(1)(a) are the amount or value of the subject matter of the claim'. The words 'at the trial' which appeared in s. 68(1)(a) before the amendment in 1987 have been left out which restricted the scope to the amount or value of the subject matter at the trial. The present s. 68(1)(a) is wider in scope and covers winding-up matters as in this case where the judgment debt which had brought the winding-up order is less than RM100,000. The term 'subject matter' was dealt with in *Studham v. Stanbridge* which was an interpleader proceeding. Cave J said:
>
> > The point raised is as to the meaning of O. LA r. 12 of the County Court Rules 1889. The higher scale of costs in force in the county Court is threefold. Column A applies to cases where the subject-matter or the sum recovered exceeds 10£ and does not exceed 20£ and Col B where it exceeds 20£ and does not exceed 501, and Col C where it exceeds 50£. The question here is whether the claimant's costs come under Col C, as the learned county Court Judge has decided, or whether they do not. Rule 12 provides that in interpleader proceedings the 'subject-matter' shall mean in the case of a claimant (which is this case) 'the amount of the value of the goods his claim to which is allowed, plus the amount of the damage

(if any) adjudged'. Now, here the county Court Judge has found that the amount of the value of the goods the claim to which was allowed was 51£ and he has adjudged 10£ damages. Column C therefore applies because the subject-matter exceeds 50£.

Then came the following conclusion of the learned Chief Justice upon which the respondents heavily relied:

> It is clear therefore the Court does not merely look at the relief sought but also considers the value of the judgment if it can be ascertained.

Learned Counsel for the appellant, on the other hand, contended that the preliminary objection was misconceived pointing out that the words used in s. 68 (1)(a) of the Act were: "when the amount or value of the subject-matter of the claim." He relied on *Monohary Teresa & Anor. v. Tan Ah Lek* [1996] 1 CLJ 149; [1995] 3 MLJ 365 CA. As regard *Yap Fook Cheong* case, *supra,* he pointed out that the claim was less than RM100,000. Finally, Counsel besought for time to apply for leave to appeal, should his contention fail.

I have considered the matter. In my view no leave of Court was required for this particular appeal. Section 68 (1)(a) of the Act used the phrase "amount or value of the subject-matter of the claim". The phrase must be read as a whole. In the instant case under appeal, the subject-matter is the road traffic accident and the claim of the 1st plaintiff/appellant is for an amount far in excess of RM100,000. That being so, the amount adjudged at the trial assumes little or no significance.

In support of my above view, I would refer to the following enactments and cases.

Proviso (c) to s. 108 of the County Courts Act 1959 (English), ran thus:

> 108 ....
> ...
>
> Provided that, without the leave of the judge, there shall be no appeal under this section ...
>
> (a) ...
>
> (b) ...
>
> (c) in proceedings in interpleader **where the money claimed, or the value of the goods or chattels claimed or the proceeds thereof, does not exceed twenty pounds.** (emphasis added).

Of course, the said proviso (c) related to interpleader proceedings. That is not relevant in considering the point in issue. What is material is the weight or significance attached to the word "claimed".

In construing that the right of appeal under the said proviso (c) was dependent on the amount claimed and not on the amount recovered, the case *Dreesman v. Harris* [1854] 9 Exch. 485 was cited. (See: *Halsbury's Statutes of England* 3rd Ed. vol. 7 p. 373; *Halsbury's Laws of England* 4th Ed. vol. 10 paras. 654, 655.] In *Dreesman v. Harris, supra*, the action for breach of a contract was commenced in the County Court. The claim exceeded 20£, but the Judge gave judgment for 12£ only. On appeal, the question of the right to appeal without leave was raised. The relevant enactment appearing in the judgment ran thus:

> that if either party **in any cause of the amount** to which jurisdiction is given to the county Courts by this Act shall be dissatisfied with the determination or direction of the said Court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same.

For the respondents it was argued that the appeal would not lie on the ground that the judgment was for a sum less than 20£, and that, if an appeal were allowed here, a party might reserve to himself the right of appeal in all cases by extending his claim to a sum exceeding 20£. The argument was rejected. It was held to the effect that the cause was appealable without leave and that an appeal would lie where the amount of the claim exceeded 20£ although the judgment appealed against gave a smaller amount. Likewise, a defendant could appeal as of right respecting his counterclaim if the counterclaim was for over 20£ even though the plaintiff's claim was below 20£ (see *Smith v. Gill* [1896] 2QB 166; *Brett v. Thrower* [1945] 2 AER 284).

Chan Kee Beng v. Ramasamy Naidu [1939] MU Rep. 113 involved the construction of s. 56 of the Johor Courts Enactment. The relevant provision of the said s. 56 at the material time read:

> 56(i) No appeal shall lie from the decision of a Court of a Magistrate to a Court of a Judicial Commissioner in any civil suit the amount or the value of the subject-matter whereof does not exceed one hundred dollars;
>
> ...
>
> ...

In *Chan Kee Beng* case, *supra*, the plaintiff's claim was for RM250 but the Magistrates' Court gave judgment for RM100 only. The question arose as to whether the proper procedure for the dissatisfied party was to appeal against the judgment. The issue turned on whether the determining factor was the amount or value of the subject-matter of the **appeal** or the amount or value of the subject matter of the civil **suit.** In his judgment Mills J said:

> I have no hesitation in construing s. 56 to mean this, "If the amount or value of the subject-matter of any civil suit does not exceed RM100, no appeal shall lie

He went on to hold that "the determining factor is not the amount or value of the subject-matter of the appeal, but the amount or value of the subject-matter of the civil suit." And he ruled that since the amount claimed in the civil suit exceeded RM100, an appeal would lie. *Chan Kee Beng* case, *supra*, therefore decided, on a construction of s. 56 of the Johor Courts Enactment then prevailing, that the amount was determined not by the award handed down by the trial Court but by the amount of the subject-matter of the suit.

Brett v. Thrower [1945] 2 AER 284 is also authority that the claim determined whether leave of appeal was required. It was a counterclaim for damages for nuisance in the sum of £20. The counterclaim was dismissed. The defendant appealed without first obtaining the leave of the Court. The plaintiff took preliminary objection that the appellate Court had no jurisdiction to hear the appeal since the claim was one respecting which no appeal lay without the leave of the county Court Judge and such leave had not been obtained. The law in point was the County Courts Act 1934 s. 105 which provided:

> If any party to any proceedings in a county Court is dissatisfied with the determination or direction of the Judge in point of law or equity or upon the admission or rejection of any evidence, the party aggrieved may appeal therefrom to the Court of Appeal subject to the Rules of the Supreme Court: Provided that, without the leave of the Judge, there shall be no appeal
>
> (a) in any action founded on contract or on tort (other than an action for the recovery of land or an action in which the title to any hereditament has come in question) where the debt or damage claimed does not exceed £20.

Obviously, since the counterclaim was £20, it did not "exceed £20".

The Court of Appeal recognised that the phrase "where the debt or damage claimed" in proviso (a) of the said s. 105 was to be construed as covering not only a claim by the plaintiff but a counterclaim by the defendant. (see *Smith v. Gill* [1896] 2QB 166). It also held, on the wording of the said proviso (a), that the fact that the addition of a claim for an ancillary injunction to the claim for damages not exceeding £20 did not take the case out of proviso (a) of the said s. 105.

The preliminary objection that the appeal was improper without the leave of the county Court was upheld and the appeal was dismissed.

I now revert to *Yap Fook Cheong & Anor. v. Burkill (Malaya) Sdn. Bhd. & Anor.* [1991] 3 MLJ 160 and *Monohary Teresa & Anor. v. Tan Ah Lek* [1996] 1 CLJ 149; [1995] 3 MLJ 365 CA.

In *Yap Fook Cheong & Anor. v. Burkill (Malaya) Sdn. Bhd. & Anor.* [1991] 3 MLJ 160 a default judgment for RM67,360.69 with interest was entered against a company, Urachom Foam (M) Sdn. Bhd., of which the 2 appellants were directors. The Ist respondent then successfully obtained a winding-up order against the said company. By an action the appellants sought to challenge the said winding-up order. The 1st respondent applied to strike out the appellants' writ and statement of claim under O. 18 r. 19 of the Rules of the High Court 1980. The Senior Assistant Registrar refused the application. The 1st respondent appealed to the Judge in chambers. The learned trial Judge allowed the appeal. Against the decision of the learned trial Judge the appellants appealed to the Supreme Court. Before the Supreme Court a preliminary point on the impropriety of the appeal was taken by Counsel for respondents in that the appeal was filed without leave of the Court under s. 68 (1) (a) of the Courts of Judicature Act 1964. Hashim Yeop A. Sani CJ (as he then was) in dealing with the issue of whether leave was required under the said s. 68 (1) (a) relied on *Studham v. Stanbridge* [1895] 1 QB 870 and concluded (which I have reproduced above) thus:

> it is clear therefore the Court does not merely look at the relief sought but also considers the value of the judgment if it can be ascertained.

It is now necessary to consider how that conclusion was carried out.

In *Studham v. Stanbridge, supra,* which was a case on interpleader's summon, the claimant claimed the right to the goods seized in execution of a judgment obtained in the County Court. He deposited a sum of 36£ into Court towards payment for the execution and all costs. The Judge of the County Court adjudged that the claimant was entitled to all the goods seized which was valued at 51£ and also awarded him 10£ damages with costs. The question arose as to whether the claimant was entitled to have his costs taxed under Column A, B, or C of the County Court Rules 1889.

Under the County Court Rules, the claimant would be entitled to have his costs taxed under Column C of the higher scale of costs "where the subject-matter or sum recovered exceeds 5£" It was argued on behalf of the execution creditor that the "subject-matter"of the interpleader proceeding was the sum the claimant paid into Court. In rejecting the argument, Cave J said: (p. 872).

> The question here is whether the claimant's costs come under Col. C, as the learned county Court Judge has decided, or whether they do not. **Rule 12 provides that in interpleader proceedings the "subject-matter" shall mean in the case of a claimant (which is this case) "the amount of the value of the goods his claim to which is allowed, plus the amount of the damage (if any) adjudged**." Now, here the county Court Judge has found that the amount of the value of the goods the claim to which was allowed was 5£, and he had adjudged 10£ damages. Col. C therefore applies because the subject-matter exceeds 50£."

(emphasis added).

From the above quoted passage of Cave J's judgment it is clear that the definition of *"subject-matter" was* derived directly from O. 50A r. 12 of the County Court Rules 1889 under which the damages adjudged was an element to be taken into consideration. Therefore the observation of Hashim Yeop A. Sani, CJ quoted above that in deciding whether or not to grant leave under s. 68 (1) (a) the Court "does not merely look at the relief sought but also considers the value of the judgment if it can be ascertained" must be viewed in the light of the definition of "subject-matter" provided in the said r. 12 of the County Court Rules 1889.

In *Monohary Teresa & Anor. v. Tan Ah Lek* [1995] the said s. 68 (1)(a) was also considered. It was also a running down action. The Court of the first instance assessed damages on 100% liability to be RM250,050.34 but since the plaintiff was found 25% to blame he was awarded RM187,537.84 damages. Taking the view that the amount recoverable from her was less than RM250,000 (the prevalent statutory imposed amount below which leave to appeal had to be sought), the defendant applied to the Court of Appeal for leave to appeal. However, by the time the application came up for hearing, the time limited for appeal (i.e. one month from the date of the decision of the learned trial Judge) had long expired. The Court of Appeal held that leave to appeal was not required although it granted the defendant an extension of one week to file a notice of appeal.

In my view, the facts in *Monohary case* are distinguishable and the case is of no assistance to the appeal presently before us. In that case the claim of the plaintiff was not quantified in the writ or action. It was the trial Court of the first instance that assessed the total damages at RM250,050.34 and awarded the plaintiff the sum of RM187,537.84 after apportionment of liability whereas in the present appeal before us, the plaintiff's claim was well over RM100,000 (the statutory amount then prevalent) except that the learned trial Judge awarded the plaintiff RM62,400 in general and special damages.

I agree with the Court of Appeal that the said s. 68 (1)(a), as it stands, is unsatisfactory; but any amendment thereto, if considered desirable, is outside the sphere of the Court.

Having regard to the wording in proviso (a) of s. 68(1) of the Courts of Judicature Act 1964 and in the light of the authorities cited above, I am of the view that since the claim of the 1st plaintiff/appellant was well over RM100,000, he was entitled to appeal without leave even though the trial Court had awarded RM62,400. In my view, the effect of s. 68(1)(a) of the Courts of Judicature Act 1964 (as it was then in force) was that if the amount or

value of the subject-matter of the claim was RM100,000 or more, appeal could be brought without leave. To render it necessary that leave should be obtained the amount or value would have to be less than RM100,000. There might well be cases where the sums adjudged may be validly taken into account; the instant appeal before us, however, is not one such case.

Reported by Gan Peng Chiang